

REMARKS

By this amendment, claim 1 has been amended. Claims 1-9 remain in the application. Support for the amendments to the claim can be found the specification and drawings. No new matter has been added. This application has been carefully considered in connection with the Examiner's Action. Reconsideration, and allowance of the application, as amended, is respectfully requested.

Rejection under 35 U.S.C. §103

Claim 1 recites a therapy combination comprising:

- a locating unit for locating a therapy zone within an object;
- a therapy unit which is provided with a therapy head for focusing energy in a focus, the therapy unit and the locating unit being movable relative to one another; and
- a measuring device which comprises two sub-systems and serves to determine the relative position of the two sub-systems, one sub-system being attached to the locating unit while the other sub-system is attached to the therapy unit in a defined position relative to the therapy head, wherein the locating unit enables an alignment of the focus of the therapy head relative to a central ray in the therapy zone in response to a determination of the relative position and orientation of the two-subsystems with respect to one another, wherein the sub-system attached to the locating unit includes at least three receivers arranged in a manner that defines a triangle, and wherein the other sub-system attached to the therapy unit includes at least three transmitters arranged in a manner that defines a polygon, the at least three transmitters configured to successively transmit pulse-shaped signals, wherein the sub-system attached to the locating unit is configured to receive the successively transmitted signals from an active one of the at least three transmitters and measure the times of flight of the signals from a respective active transmitter to each of the at least three receivers,

the sub-system attached to the locating unit further for measuring times of flight from all transmitters to all receivers.

Support for the amendments to claim 1 can be found in the specification at least on page 5, lines 14-33; page 6, lines 1-12 and 24-25; and page 7, lines 8-10.

Claims 1, 2, 3, and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over **Paltieli** (US 6216029) in view of **Pant et al** (US 6461314). This rejection is traversed for at least the following reasons. With respect to claim 1, applicant traverses this rejection on the grounds that the reference is defective in establishing a prima facie case of obviousness.

As the PTO recognizes in MPEP § 2142:

... The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness...

It is submitted that, in the present case, the examiner has not factually supported a prima facie case of obviousness for at least the following reason. The reference does not teach the claimed subject matter. The **Paltieli** and **Pant et al** references cannot be applied to reject claim 1 under 35 U.S.C. § 103 which provides that:

A patent may not be obtained ... if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains ... (Emphasis added)

Thus, when evaluating a claim for determining obviousness, all limitations of the claim must be evaluated. However, since neither **Paltieli** nor **Pant et al** teaches or

suggests a "locating unit ... enables an *alignment* of the *focus* of the therapy head *relative to a central ray* in the therapy zone *in response to* a determination of the relative position *and* orientation of the two-subsystems with respect to one another, wherein the sub-system ... to the locating unit includes at least three *receivers* arranged in ... *a triangle*, and wherein the other sub-system ... to the therapy unit includes at least three *transmitters* arranged in ... *a polygon*, the ... transmitters configured to *successively transmit pulse-shaped signals*, wherein the sub-system ... to the locating unit is configured to *receive the successively transmitted signals* from an active one of the ... transmitters and measure the times of flight of the signals from a respective active transmitter to *each* of the ... receivers, ... further for measuring times of flight from *all* transmitters to *all* receivers" as is claimed in claim 1, it is impossible to render the subject matter of claim 1 as a whole obvious, and the explicit terms of the statute cannot be met.

Thus, for this reason, the examiner's burden of factually supporting a *prima facie* case of obviousness has clearly not been met, and the rejection under 35 U.S.C. §103 should be withdrawn. Claim 1 is believed allowable.

With respect to claims 2, 3 and 8, the same depend from and further limits allowable independent claim 1 and therefore are allowable as well.

Accordingly, claims 1, 2, 3 and 8 are thus allowable and an early formal notice thereof is requested. The 35 U.S.C. § 103(a) rejection thereof has now been overcome.

Claims 4, 5 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over **Paltieli** (US 6216029) in view of **Pant et al** (US 6461314) and further in view of **Schwicker et al** (US 5836898). This rejection is traversed for at least the following

reasons. Claims 4, 5 and 6 depend from and further limit allowable independent claim 1 and therefore are allowable as well.

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over **Paltieli** in view of **Pant et al** in view of **Schwicker et al** and in further view of **Simon et al** (US 6990368). This rejection is traversed for at least the following reasons. Claim 7 depends from and further limits allowable independent claim 1 and therefore is allowable as well.

Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over **Paltieli** in view of **Pant et al** and in further view of **Cabral et al** (US 6217214). This rejection is traversed for at least the following reasons. Claim 9 depends from and further limits allowable independent claim 1 and therefore is allowable as well.

Conclusion

Except as indicated herein, the claims were not amended in order to address issues of patentability and Applicants respectfully reserve all rights they may have under the Doctrine of Equivalents. Applicants furthermore reserve their right to reintroduce subject matter deleted herein at a later time during the prosecution of this application or a continuation application.

It is clear from all of the foregoing that independent claim 1 is in condition for allowance. Dependent claims 2-9 depend from and further limit allowable independent claim 1 and therefore are allowable as well.

The amendments herein are fully supported by the original specification and drawings; therefore, no new matter is introduced. An early formal notice of allowance of claims 1-9 is requested.

Respectfully submitted,



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